



**COUNCILMEMBER CARL DEMaIO**

FIFTH DISTRICT

CITY OF SAN DIEGO

**MEMORANDUM**

DATE: March 18, 2010

TO: Councilmember Donna Frye

FROM: Councilmember Carl DeMaio

CC: Councilmember Sherri S. Lightner

Councilmember Marti Emerald

RE: Seals at the Children's Pool

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Thank you for agreeing to hold a special session of the NR&C committee to discuss how the City can implement rules regarding access to the Children's Pool during pupping season.

As we discussed, the following three scenarios would be docketed for discussion and action:

**Option 1: Keeping the Current Rules for Shared Access to the Beach**

**Option 2: Prohibiting the Public to Cross the Rope During Pupping Season**

**Option 3: Prohibiting the Public from Entering the Beach During Pupping Season**

In order to provide for thorough and effective consideration of each of these options, I request that city staff present details on how each of these three options would be implemented on a go-forward basis. Specifically, staff is asked to provide a written report answering the following question based on Options two and three:

1. How would each Option be implemented?
2. What staffing would be required for enforcement?

In order to ensure that the City Council understands the legal authority and ramifications for pursuing Options 2 and 3, I also request that the City Attorney's office provide a written analysis on the following questions:

1. What rules would be posted?
2. Does the city have the legal ability to implement the Options?
3. What City fines could or should be levied in case of violations?
4. What ordinances or permits would be needed to implement either option?
5. In order to pass the required ordinances or seek the required permits, what findings have to be made by the City Council?
6. Would any of the options require an approval process from any additional governmental entities? Specifically, would the City have to seek a new permit from the Coastal Commission?
7. Some have argued to limit public access to the beach in any way, the City Council might have to make a determination to change its use from "shared use" to "marine mammal use." Would such a determination trigger an entire set of additional regulations from National Marine Fisheries Service or other governmental entity? Additionally, would implementing either Option 2 or 3 result in bringing the Children's Pool under any additional regulations or legal requirements of the federal or state government?
8. Are there any other legal risks or challenges faced by the City with respect to pursuing either option?
9. What approximate timeline would be needed to implement each Option?

With respect to the other issues raised by Ms. Lightner at the March 17, 2010 hearing, I would request that those issues be docketed as a discussion item for the Committee to determine how best to pursue answers to those questions.

The City of San Diego has already been the subject of intense and protracted litigation over the management of the Children's Pool – at a significant cost to taxpayers. My hope is to prevent additional litigation by ensuring that proposals for changing the way the Children's Pool is managed are presented with proper details – and subject to adequate legal review.

I appreciate your leadership in advancing this process. I look forward to the special NR&C meeting on this issue so we can continue to work in a thoughtful manner towards a permanent solution to this long standing issue.